IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 60 OF 2004

Shri Waman Laxman Sawant,
major, married, businessman,
r/o House No.591, Bhaireliwadda,
Nagarcem, Canacona, Goa. ... Applicant

versus

1. Shri Ashok Anand Sawant,
   Major, married, serviceman,
   r/o Dessaiwado, Near Panchayat,
   Kundai, Ponda, Goa.

2. State,
   through the Police Inspector,
   Ponda, Goa. ... Respondents

Mr. Nitin Sardessai and Ms. Flora Mendonsa, Advocates for the Applicant.

Mr. Arun Bras De Sa, Advocate for Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: N. A. BRITTO, J.

DATE : 16TH OCTOBER, 2004

ORAL JUDGMENT

The Petitioner invokes the jurisdiction of this Court under Section 482 of the Criminal Procedure Code, 1973(Code, for short)

after Order dated 28th February, 2003, of the learned Judicial Magistrate, First Class, Ponda, in Criminal Case No.144/P/98/C which went against him and after he failed in Criminal Revision Application No.37/2003 filed by him before the Court of Sessions, Panaji, by Judgment/Order of the learned Sessions Judge, Panaji, dated 13th February, 2004.

2. What is in the name?

Shakespeare might have asked and answered that a Rose by any other name would smell as sweet. That is the substance of the dispute.

3. The Petitioner is A-1 and is the son of A-3 and A-4 in the said criminal case. In the cause title of the said criminal case, his name was shown as Nilesh Laxman Sawant. The learned Judicial Magistrate, First Class, by virtue of Order dated 2nd August, 2001, ordered the issue of process against all the accused under Sections 143, 147, 323, 324 r/w 149 of the Indian Penal Code.

4. However, the summons sent to A-1 was returned unserved with the endorsement that A-1 was staying at Char Rasta, Canacona. Summons were issued again but this time, they were returned with endorsement that no person by name Nilesh Laxman Sawant was found.

5. Thereafter, the complainant filed an application dated 4th April, 2002, stating that the said Vaman Laxman Sawant is also known by name Nilesh Laxman Sawant. Upon the said application being made, the learned Judicial Magistrate, First Class, directed the complainant first to amend the cause title and probably pursuant to the said direction, the complainant filed another application dated 26th July, 2002, to correct the cause title and at this time, the learned Judicial Magistrate, First Class, curiously, observed that the allegations in the complaint were against A-1, Nilesh Laxman Sawant and making further observations which are not relevant for our purpose, proceeded to dismiss the said application. It appears that the complainant filed another application which came to be dismissed again by another Order dated 17th October, 2002, by observing that the complainant could not add persons as accused on the basis of endorsement on the summons.

6. The complainant then filed yet another application dated 5th December, 2002, praying to issue fresh summons to accused Nilesh Laxman Sawant with address at Kundaim, Goa and along with the said application, the complainant attached the wedding invitation card of A-1. This application was allowed but again, the summons issued at the said given address were returned unserved with an endorsement that the family members of A-1 had informed that A-1 was working at Char Rasta, Canacona and as such, summons were again issued at the Canacona address and were again returned

unserved with endorsement that the whereabouts of A-1 at Canacona address were not known.

7. It appears that the learned Judicial Magistrate, First Class, issued further Orders on 23rd January, 1993, to issue fresh summons to A-1 at his residential address as given on the summons dated 27th December, 2002, and it further appears that the Bench Clerk wrongly wrote on the roznama that the summons to accused no.1 should be issued to his address dated 27th December, 2002.

8. However, the fact remains that the Petitioner as Vaman Laxman Sawant appeared before the learned Judicial Magistrate, First Class on 31st January, 2003 and filed an application supporting the same with an Affidavit and praying therein that the summons issued to Vaman Laxman Sawant be withdrawn. It appears that the learned Judicial Magistrate, First Class, entertained the said request of the Petitioner and Vaman Laxman Sawant and again ordered fresh summons to be issued to A-1 at the address given in the summons dated 27th December, 2002.

9. Subsequently, the complainant filed an Affidavit stating that the person who had appeared before the Court on 31st January, 2003, claiming to be Vaman Laxman Sawant is A-1 who was popularly known as, Nilesh. At this time, probably another Judicial Magistrate in charge of the case came to the conclusion that there was sufficient

material to conclude that name of A-1 was Vaman Laxman Sawant but he is popularly known as Nilesh Laxman Sawant. The learned Judicial Magistrate, First Class, further observed that this case being at the stage of issue of process where he was required to look for prima facie material, the application deserves to succeed and ordered summons to be issued to A-1/Vaman alias Nilesh Laxman Sawant at the Canacona address.

10. As already stated against the said Order dated 28th February, 2003, the Petitioner filed a revision before the learned Sessions Judge, Panaji. The learned Sessions Judge, observed that there was prima facie material on record to show that A-1 and A-2 were brothers and A-4 was the father of A-1 and A-2 and that the accused was trying to avoid the service of summons by taking spacious plea that he is not known as Nilesh Laxman Sawant. The learned Sessions Judge, further observed that the trial Court was justified in issuing summons in the name of Vaman alias Nilesh Laxman Sawant and being so there was no fault to be found with the Order of the learned Judicial Magistrate, First Class.

11 Mr. Nitin Sardessai, learned Counsel of the Petitioner has submitted that the abuse of process of Court is writ large in the proceedings of both the Courts below. Mr. Sardessai, learned Counsel has further submitted that there was no provision in the Code which enabled the learned Judicial Magistrate, First Class, to

correct the name of the Petitioner from Nilesh Laxman Sawant to Vaman alias Nilesh Laxman Sawant. Shri Sardessai, has referred to Section 319 of the Code as well as to a decision of this Court in the case of **Ramesh Damodar Nagare** v. **Ashok Damodar Nagare** (1998(1) MH.L.J. 798.

12. There is no doubt that there is abuse of process of the Court in this case, but, the boot appears to be on the other foot. The Petitioner has made the complainant to run from pillar to post in an attempt to get the summons served on the Petitioner. In my view, neither the provisions of Section 319 of the Code nor the decision on which reliance is placed are applicable to the case at hand. The Order dated 28th February, 2003, of the learned Judicial Magistrate, First Class, Ponda, is merely an Order correcting the name of A-1 from Nilesh Laxman Sawant to Vaman alias Nilesh Laxman Sawant. It is not an Order issuing process against A-1 which was issued much earlier. It is also not a case of adding another person as accused. There was no question of dispute of identity of A-1 who was shown to be the brother of A-2 and the son of A-3 and A-4. It is true that there is no provision in the Code providing for correction of name of an accused in the cause title of a complaint, but it must be borne in mind that a Code was not enacted to meet each and every situation which human ingenuity may create from time to time. Courts have certain incidental powers which are very necessary for their very survival and existence. If the learned Judicial Magistrate, First Class, corrected

the name of A-1 in the situation explained above, it is in exercise of such powers that the said correction was made.

13. In my view, this application before this Court is nothing but an abuse of the process of the Court and, therefore, deserves to be dismissed. The Petitioner to pay costs of Rs.1000/- to the complainant.

N. A. BRITTO, J.

RD.